IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Crl. Revision Petition No.215 of 2006
Date of Decision: 23.1.2007

Om Parkash and others.

..... Petitioners.

Versus

State of Haryana.

..... Respondent.

CORAM: Hon'ble Mr.Justice Mahesh Grover

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Present: Shri R.S.Cheema, Senior Advocate with Shri R.K.Trikha and Shri K.S.Nalwa, Advocates for the petitioners.
Shri S.K.Hooda, Senior Deputy Advocate General, Haryana for the respondent-State.

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Mahesh Grover,J.

The present revision petition is directed against order dated 17.12.2005 whereby Additional Sessions Judge(II), Faridabad (hereinafter described as `the trial Court') has ordered framing of charge against the petitioners for the offence punishable under Sections 306/34 of the Indian Penal Code (for short, `the I.P.C.') in the criminal case initiated vide F.I.R.No.378 dated 14.9.2003 registered under Sections 306/34 of the I.P.C. at Police Station, Hodal, District Faridabad.

Briefly stated the facts of the case are that Seema Rani (petitioner no.6) daughter of Sant Lal (petitioner no.5) was married to

deceased-Sanjeev Kumar on 22.9.1998. Om Parkash, Parkash Lal, Prem Chand (petitioner nos. 1, 2 and 4) are brothers of Seema Rani, whereas Veena Rani (petitioner no.3) is her sister; Poonam and Neeraj (petitioner nos. 7 and 8 are her sisters-in-law and Sanno Devi (petitioner no.9) is her mother. Dashrath Kumar, the fourth brother of Seema Rani was also named in the F.I.R., but he has since died. Sanjeev Kumar was an unemployed youth and the marriage was performed allegedly by misrepresenting this fact. It was represented to the petitioners that the financial status of the family of Sanjeev Kumar was sound and they were owners of the several trucks, whereas the fact was that the family was bankrupt and Sanjeev Kumar has also given an application to the Employment Exchange for employment. The family of Sanjeev Kumar started making demands of dowry immediately after marriage. The petitioners gave some money and gifts in the initial period of the marriage, but could not satiate the desires of the family of Sanjeev Kumar. Serious differences erupted between the two families and ultimately, Seema Rani filed a complaint under Section 406, 498-A of the I.P.C. on the basis of which F.I.R.No.83 dated 9.42003 was lodged at Police Station, Sohna, District Gurgaon against Sanjeev Kumar and his family members. Sanjeev Kumar was arrested pursuant to the said F.I.R. on 16.4.2003 and on 17.4.2003, he gave a declaratory statement (Annexure P3) admitting that a number of gifts were received at the time of marriage and that Rs.80,000/- were demanded by him and were paid by the family of Seema Rani. He had also stated that by this amount, he had purchased a truck, but suffered losses and had to sell the truck. Sanjeev Kumar further stated that Seema Rani left the matrimonial home on 18.12.2002.

On 14.9.2003, Sanjeev Kumar allegedly committed suicide by jumping into Sati Ka Talab (Pond), Faridabad. He is said to have left two suicide notes dated 14.9.2003.

F.I.R.No.378 dated 14.9.2003 was registered on the statement of Kashmiri Lal, father of Sanjeev Kumar. After investigation, the challan was presented against the petitioners to face trial under Sections 306/34 of the I.P.C. and accordingly, they have been ordered to be charge sheeted vide order dated 17.12.2005 by the trial Court, which has been impugned in this revision petition.

It has been contended by the learned counsel for the petitioners that the impugned order is patently erroneous as there is interpolation on the dates on one of the suicide notes implying that it had been simply created and was not a genuine document. Besides, no case of abetment could be made out against the petitioners as all the family members have been roped in which rather shows the anxiety and exuberance of the complainant to implicate every member of the family. That apart, the legal tests as contemplated in the provisions of Sections 107 and 306 of the I.P.C. are not made out.

On the other hand, learned counsel for the State vehemently contended that it was a clear case where Sanjeev Kumar had been driven to commit suicide because of the conduct of the petitioners and they were squarely responsible for having abeted the same thereby making themselves liable for punishment under Section 306 read with Section 34 of the I.P.C.

I have heard learned counsel for the parties and have perused the record.

Before embarking upon the controversy, it would be

appropriate to refer to the allegations as made in the F.I.R. lodged on the statement of Kashmiri Lal, father of Sanjeev Kumar. It had been stated by Kashmiri Lal that he had three sons and a daughter, out of whom Sanjeev Kumar was the eldest and he was 31 years old. Sanjeev Kumar was married to Seema Rani daughter of Sant Lal about five years back. Seema Rani was a quarrelsome lady and used to go to her parental house at Sohana very often without the consent of Sanjeev Kumar and other family members. She used to threaten that her brother- Om Parkash Verma was an Advocate and she could use his influence to settle scores with them. Many times, Om Parkash Verma alias Neelu along with his brothers Deshu alias Dashrath, Prem, their father- Sant Lal, mother-Shanno and sister-Veena used to come to them in a jeep. They used to beat Sanjeev and give threats to them. Besides, Parkash, brother of Seema Rani, his wife- Poonam and Neeru wife of Dashrath also used to taunt and threaten Sanjeev as and when he went to the house of his in-laws. The complainant and his family members including some respectable persons of the city, namely, Radhey Sham Kalra, former President, Market Committee, Sohana, Shri Harkishan, Contractor, Arjun Lal son of Lekh Raj, Kishan Chand Kapoor son of Nirmal Dass Kapoor and Arjun Kalra son of Khem Chand Kalra had tried to persuade Om Parkash and his family members for behaving properly. However, They did not put an end to their misbehaviour and continued to torture Sanjeev Kumar mentally as well as physically. In order to stop all this, Kashmiri Lal separated Sanjeev Kumar upon which the latter had taken a separate residence on rent and started living there along with his wife-Seema Rani and daughter Vaidita, but the accused persons did not restrain themselves and continued acting in the aforestated manner. In April,2003, Seema

lodged an F.I.R. against the complainant, his sons Sanjeev Kumar, Ravi, wife Santosh Kumar and daughter Mamta for raising demand of dowry. Sanjeev Kumar and Ravi had gone to Courts at Gurgaon where Om Parkash and his brother Dashrath gave beatings to them and also threatened that they would be implicated in such false cases. Before this, on 12.8.2003, when the complainant and his other family members went to Gurgaon Courts in respect of the dowry case, Om Parkash and others threatened them a lot. Fed up with the beatings and torture as well as false implication at the hands of Seema Rani and her family members, Sanjeev Kumar committed suicide. The slippers of Sanjeev Kumar along with an exercise book containing suicide notes written by him before his death were found near on the staircase of the pond. The complainant along with the help of witnesses retrieved the dead body of Sanjeev Kumar from the pond and informed the police.

The English translation of first suicide note dated 14.9.2003 left by Sanjeev Kumar, which has been placed on record as Annexure P4, reads as under:-

> "My parents, brothers, sister are innocent.
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> I, Sanjiv Kumar son of Shri Kashmiri Lal, resident of Hodal was married with Seema d/o Sant Lal, r/o Sohna five years back. I was not aware about the nature of these persons. Immediately after the marriage, Seema, mother (Sanno Devi), father (Sant Lal), brother (Prem), sister-in-law (wife of Prem), her other brother Parkash, his wife Poonam, third brother Des Raj (Dashrath), his wife Neeru, her fourth brother Neelu @ Om Parkash, my sister-in-law Veena r/o Faridabad, my Sadhu

(husband of wife's sister), Anil Gulati (Luxmi Furniture, Faridabad) opposite 1 No. Dashera Ground, Faridabad, used to frequent to our house daily in jeeps only to instigate Seema to get separated from my family and keep our family under her thumb. They gave beatings to my mother in my presence and gave beatings to my family members. Earlier we were of the view that her family members were wrong but we found that the nature of my wife was more dangerous. Her real uncle and aunt and Pari Gulati step mother of Anil Gulati told me that nobody was ready to marry Seema and how we fell prey to them. Seema is such a dangerous lady who manhandles me daily and gives me beatings with dandas. When I did refused her proposal to get separated from my family, she did force me to do that and to lead a life of obliged son-in-law. Whereas there was no such thing settled before the marriage. In order to set the things in order, I at the instance of my wife Seema, mother-in-law and father-in-law, Om Parkash, Neelu and others all the brothers-in-law and sisters-in-law got a rented house at Faridabad and I landed into trouble there. My sister-in-law who lives in Faridabad and my Sadhu Anil Gulati used to cause a quarrel between me and Seema. Now, it is to think that after getting me separated from my parents, brother and sister, why my sister-in-law and Sadhu cause a quarrel daily between us. Thereafter, sometimes Om Parkash @ Neelu, Desh Raj @ Dashrath, Prem, mother-in-law used to cause quarrel between us earlier at Hodal then the same story was repeated at

Faridabad. As to what I did earn by doing job she used to take the same with her to Sohna. The gold jewellery given by parents,necklace, ear rings, bangles, mangal sutra and silver jewellery and my savings amounting to Rs.1,75,000/- had been given by her to her brother. My youngest brother-in-law Neelu @ Om Parkash practising as lawyer at Gurgaon is man of loose character, having all bad habits of drinking, gambling etc. He used to come with his friends to our house at Faridabad to satisfy his instincts and on my refusal used to get me beaten up from his friends and give beatings to me himself and used to snatch my money and Seema also did not say anything to her brother Neelu @ Om Parkash, rather she used to ask me to give him money. Seema gave him Rs.1,75,000/- for his practice. When I came to know about it she used to give me beatings and used to go to her parental house without informing me. I had earned Rs.1,75,000/- with hard working only to construct my house. I used to save my matrimonial life and used to go to take Seema but they used to give me beatings and threats with life. Om Parkash @ Neelu used to boost that since he is an advocate and he having got eliminated me and my family would go scot free being an Advocate. They used to torture me one way or the other and at their factory at Rajpura, all my brothers-in-law having tried me with strings used to give me beatings with dandas and demanded money from me. I fail to understand about the reason. On talking affectionately Seema disclosed that they did want to marry her to such a person, who

would live with them and remain sub-servient to them because they were aware of the character of Seema and her nature. Whatever has happened with me and whatever is happening to me, my wife Seema, her parents, brothers and sisters-in-law, my sister-in-law and Sadhu are responsible and taunt me that they did want son-in-law like me who would dance to their tunes. My mother-in-law Sanno Devi and sister-in-law Veena asked my landlady at Faridabad to get aborted my daughter before her birth. Today, i.e. 14.9.03, I am going to Sohna to take Seema and I want that my matrimonial life maybe saved so that the life of my daughter may not be ruined but (Seema) neither thinks about her husband nor about her daughter. I along with Seema, as per the desire of her parents and brothers, started living at Palwal instead of Faridabad. We are living at Palwal but Palwal being near to Sohna, my brother-in-law and sister-in-law used to frequent our house and to interfere in our life. Om Parkash @ Neelu, used to instigate Seema and after going myself on job, used to take her away. The character of Seema was not good but I wanted to save my married life so that the life of my daughter would not have ruined. My daughter Babita Verma is a very lovely girl. Seema has been living at Sohna for the last 4 months. She under the influence of her family has filed a false case of dowry against my innocent parents, brothers and sister who is handicapped,which have never been in my dreams. My father along with the respectables of our brother-hod went twice on 28.3.2003 and

6.4.2003 to their place so that a compromise could be effected but Neelu @ Om Parkash and all the brothers of Seema have made by life miserable. Today, I, with the grace of `Mata Rani' want to make a last effort to save my matrimonial life with Seema and am going on 14.9.03 to Sohna to take Seema but only the Almighty knows as to what is in the store of destiny for me there. I apprehend that Seema's mother Sanno, father Sant Lal, Prem, his wife Neeru, Poonam wife of Parkash, Dashrath @ Desu, his wife Neeru, Om Parkash (Neelu), Veena (sister), Sadhu (Anil Gulati) may done me away. I am writing this note in the absence of any member of family at home. I am writing this letter that my parents, brothers and sister are innocent and the allegations levelled against them are false. They are being implicated by the family members of Seema. By the grace of `Mata Rani', I am going to Sohna. In case any untoward incident happens to me at Sohna and in case Seema and her family members kill me there, then Seema, her mother Sanno, father Sant Lal, Prem, his wife, Parkash,his wife Poonam, Dashrath @ Des Raj, Neeru wife of Dashrath, Om Parkash, Advocate @ Neelu, Veena sister-in-law, w/o Anil Gulati may not be spared, otherwise my soul would not get peace. All these accused may not be spared and an exemplary punishment may be awarded to them so that they may not dare to cause such a wrong to anyone else in future. I am writing all this, while enjoying my right senses, without any fear or pressure. My parents, brothers may be given protection as they

are innocent. My parents, brothers and sister are innocent.

Good bye.

Sanjiv Kumar
14.9.03”

The English Translation of second suicide note purportedly written by Sanjeev Kumar on the same day, which has been placed on record as Annexure P5, is also reproduced below:-

“ I, Sanjiv Kumar son of Shri Kashmiri Lal while enjoying my right senses write this note that my brother-in-law Neelu @ Om Parkash, Advocate, my wife Seema, father-in-law Sant Lal, mother-in-law Sanno, brother-in-law deshu @ Dashrath, Prem, sister-in-law Veena r/o Faridabad and my brother-in-law residing at Sohna namely Parkash, his wife Poonam, Neeru w/o Deshu @ Dashrath are responsible for my death because ever since my marriage for the last five years, I have been living with my wife and daughter Babita separately from my family members at Palwal and Faridabad in a rented house at the instance of my wife. Now, we, myself, my wife and minor daughter Babita are living in a rented house at Tuhi Ram Colony, behind the bus-stand, Palwal, but my wife is very quarrelsome lady and picks up[a quarrel on trifles and even gives beatings to me in the presence of our landlady. She even getting me separated from my parents does not let me live peacefully and quarrels with me on small issues. Her parents, brothers, sisters, her brother Neelu @ Om Parkash who is Advocate by profession is a person of ruffian nature, who

having acquired a fake degree of law is exploiting the people. After my death, it is my last wish that a exemplary punishment may be awarded to the family members of Seema. Seema's brother Neelu @ Om Parkash who is responsible to ruin my family, his fake degree may kindly be consfiscated and a stern action may be taken against him. He having instigated his sister has got registered a false case of dowry against me and my parents and got me tortured at the hands of inmate of jail and at the time of my appearance in the court abused me in the name of my mother and sister and had been threatening my family members with life notwithstanding the fact that I have no concern with my parents. I have been disowned and my parents are innocent. My handicapped Asthma patient sister and brothers who live separately have been accused falsely in the dowry case. They may kindly be discharged and a stern action may be taken against my in-laws, i.e. Seema's parents, her brother Neelu and other brothers. Then my soul would find peace. A justice may be imparted to my family members. Then my soul would get salvation. It is my humble prayer that my wife Seema and her family members may not be allowed to touch my dead body. I am writing this note while enjoying my right senses. Today, I am taking this extreme step due to the atrocities given by my wife Seema, Neelu @ Om Parkash Verma, mother-in-law and father-in-law, Sanno and Sant Lal, brothers-in-law Prem, Parkash, Deshu @ Dashrath, sister-in-law Veena r/o Faridabad, Poonam and Neeru. Even yesterday

13.9.03 at the time of my appearance in Court, Seema's brother Neelu @ Om Parkash Advocate , Deshu @ Dashrath gave me beatings and threatened to kill me and while extending a threat to get kidnapped my handicapped sister from the city threatened to get my family eliminated. At the time of last hearing on 12.8.03, even in the presence of the learned Judge, I was manhandled. I humbly request that my parents are innocent, my brothers and sister are also innocent. They may kindly be discharged and an exemplary punishment may be awarded to Seema, her brother Neelu @ Om Parkash Advocate, sister-in-law Veena and the entire family members of Seema. Seema has been living with her parents at Sohna for the last 10 months and is a lady of loose character and due to that she is threatening to get her husband eliminated. She does not allow me to touch my four years old lovely daughter and she has got me beaten up for number of times from her brothers. My parents, brothers, sister are innocent in the matter. They may be discharged. My wife Seema who has been living in separation for last 10months, her brother Neelu @ Om Parkash Verma, Advocate, my mother-in-law and father-in-law may be awarded exemplary punishment, who are responsible of my death. My aged parents are innocent. My handicapped sister is innocent and my two brothers are also innocent. My family members have been got implicated in a false case of dowry. They are innocent. Seema and her family members are responsible for my death. Seema and Neelu are the pin brain. I request to my family not to spare my in-laws

otherwise my soul would not live in peace. My in-laws, my wife and Neelu may be awarded exemplary punishment so that no in-laws may not harass their son-in-law and refrain from getting registered a false case of dowry so that no one else may be forced to commit suicide like me Sanjiv.

Sanjiv Kumar
14.9.03"

This Court has also perused the vernacular version of the aforementioned suicide notes which have been attached with this petition, which reveals that Annexure P5 is actually the anguished cry of a person, who ultimately took the extreme step of ending his life.

The question, however, that is to be determined is as to whether or not the petitioners are guilty of having abeted the offence punishable under Section 306 of the I.P.C. or whether or not a charge against them could be sustained. Section 107 of the I.P.C. lays down the ingredients which are necessary for bringing the offence within the ambit of abetment. It reads as follows:-

"107. Abetment of a thing.-- A person abets the doing of a thing, who-

First,-- Instigates any person to do that thing; or

Secondly.-- Engages with one or more other person or persons in any conspiracy for the doing of that thing, if an act or illegal omission takes place in pursuance of that conspiracy, and in order to the doing of that thing; or

Thirdly.- Intentionally aids, by any act or illegal omission, the doing of that thing.

Explanation 1.- A person who, by wilful misrepresentation, or by wilful concealment of a material fact which he is bound to disclose, voluntarily causes or procures, or attempts to cause or procure, a thing to be done, is said to instigate the doing of that thing."

As to what would constitute the instigation for commission of offence would ultimately depend on the facts of each case. Therefore, in order to determine whether a person has actually abetted by instigation and committed an offence punishable under Section 306 of the I.P.C., the entire evidence has to be adjudged and not viewed or tested in isolation. It has to be seen that the effect of words used by a person accused of abetment or his or her conduct is such that the instigative effect of the words used by such accused should have been sufficient to result in the ultimate commission of offence punishable under section 306 of the I.P.C.and the person using so should also be aware of the helpless and frustrated state of mind of the person to whom such words are directed.

Section 306 of the I.P.C. stands on a painfully unique pedestal as an abortive attempt invites penal consequences, whereas a successful attempt results in self destruction. Therefore, the immediate reasons which triggers off, the commission of such an offence has to be seen to determine whether the suicide, a voluntary act, but committed under the compulsion of adverse circumstances, so created by those persons, so as to attribute the commission of the offence to them and to make them responsible for it directly or indirectly,amounts to abetment or not.

Abetment in these circumstances may not necessarily mean exhortation in direct words, but normally in the offence punishable under

Sections 306 of the I.P.C., the abetor's tools becomes his conduct which may include indifferent attitude, tongue lashing, throwing tantrums, insults or any such prolonged behaviour which results in mental cruelty to the victim.

It may not, however, mean that mere intemperate behaviour or any act done in fit of momentary rage or anger necessarily implies the instigation to commit suicide. Suicide is an expression of frustration built up over a period of time when the depressive state of mind after enacting suicide in mind several times over finds its manifestation in the ultimate act. A Division Bench of this Court in the judgment reported as 1983(1) C.L.R. 660 – Raj Kumar Versus The State of Punjab observed as under:-

> "Expression `instigate' in the Concise Oxford Dictionary is defined as `urge on, incite, bring about by persuasion and in Webster, it has been defined as `urge forward', provoke with synonyms of stimulate, urge, spur, provide, tempt, incite, impel, encourage, animate. The word `instigate' in common parlance would mean to go, to urge forward or to provoke, incite or encourage to do an act.
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> The retort made by the accused when the deceased threatened to commit suicide if Rajinder Kumar did not agree to her request, did not amount to instigation by any stretch of imagination. If such a retort is accepted to be constituting instigation, then, to cite only one example, the parents would be guilty of abetment of suicide if even when most unreasonable demand is made by their child, which they are not in a position to comply with, on the threat of committing suicide and they were to retort that the

child could do so as they were not in a position to agree to his/ her request. The framers of the Code surely could never have intended this to happen."

In the judgment reported as 1992(2) R.C.R. (Criminal) 292 – State of Haryana Versus Arun Kumar, a learned Single Judge of this Court held as follows:-

"A person is said to `instigate' another to do an act, when he actively suggests or stimulates him to the act by any means of language, direct or indirect, whether it takes the form of express solicitation, or of hints, insinuation or encouragement. The word `instigate' means to goad or urge forward or to provoke, incite, urge or encourage to do an act."

Annexure P1 are the copies of the applications given by Sanjeev Kumar-deceased to the Employment Officer, Hodal, which show that he was unemployed. Besides, his marriage had certainly fallen on bad times leading to a criminal case having been registered at the behest of Seema Rani, his wife. His statement recorded on 17.4.2003 (Annexure P3) also reveals that he had received not only financial help, but numerous gifts from his in-laws. It also reveals that he was under debts which he proposed to pay off by doing petty services. The frustration of such a man is not difficult to fathom. A perusal of the suicide notes (in vernacular) does not establish clearly what instigation was provided by the petitioners forcing Sanjeev Kumar to take his own life. The ingredients of Section 107 of the I.P.C. are, therefore, not attracted qua petitioner nos.1 to 5 and 7 to 9.

The case of Seema Rani (petitioner no.6), however, is on different footing as repeated references have been made to her by the

deceased in his suicide notes, even though all embracing allegations regarding involvement of the entire family have been levelled. In a matrimony, the spouse can not entirely escape the responsibility of creating an atmosphere of unhappiness and frustration, even though the conduct of other members of the family may also be the contributory factor. She, therefore, prima facie can not escape the liability of ultimately having abetted the commission of offence. The facts of the instant case are a pointer to that direction. In the suicide note dated 14.9.2003 (Annexure P5), the deceased referred to the conduct of his wife, i.e. petitioner no.6, as under:-

> "Seema has been living with her parents at Sohna for the last 10 months and is a lady of loose character and due to that she is threatening to get her husband eliminated. She does not allow me to touch my four years old lovely daughter and she has got me beaten up for number of times from her brothers."

For the reasons stated above, the revision is partly accepted and the impugned order qua Om Parkash, Parkash Lal, Veena Rani, Prem Chand, Sant Lal, Poonam, Neeraj and Sanno (petitioner nos. 1 to 5 and 7 to 9) is set aside and they are discharged from the accusation in case F.I.R.No.378 dated 14.9.2003 under Section 306/34 of the I.P.C., Police Station, Hodal. So far as Seema Rani (Petitioner no.6) is concerned, this petition is dismissed qua her and she will stand charge sheeted for the offence punishable under Section 306 of the I.P.C. in the aforementioned F.I.R. and will face trial.

January 23,2007 (Mahesh Grover)
"SCM" Judge

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